IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THOMAS WHATLEY III,	)	
	)	
Plaintiff,	)	
v.	)	**Case No. 4:14-CV-00710-ALM**
	)	
COMMONWEALTH FINANCIAL	)	
SYSTEMS, INC. *d/b/a* NCC, and	)	
PENDRICK CAPITAL PARTNERS, LLC,	)	
	)	
Defendants.	)	

DEFENDANT, COMMONWEALTH FINANCIAL SYSTEMS, INC. *d/b/a* NCC'S, ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Commonwealth Financial Systems, Inc. *d/b/a* NCC (NCC), through counsel and under the Federal Rules of Civil Procedure, submits this Answer and Affirmative Defenses to the Complaint filed by plaintiff, Thomas Whatley III (plaintiff), and states:

NATURE OF ACTION

1. NCC admits plaintiff purports to bring this action for alleged violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, *et seq*., the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, *et seq*., and TEX. BUS. & COM. CODE § 305.053, but denies any violations, liability or wrongdoing under the law. Except as specifically admitted, NCC denies the allegations in ¶ 1.

JURISDICTION AND VENUE

2. Upon information and belief, NCC admits this Court has jurisdiction. Except as specifically admitted, NCC denies the allegations in ¶ 2.

3. Upon information and belief, NCC admits venue is proper. Except as specifically admitted, NCC denies the allegations in ¶ 3.

PARTIES

4. Upon information and belief, NCC admits the allegations in ¶ 4.

5. NCC denies the allegations in ¶ 5 as calling for a legal conclusion.

6. NCC admits part of its business is the collection of debts. Except as specifically admitted, NCC denies the allegations in ¶ 6 as calling for a legal conclusion.

7. NCC denies the allegations in ¶ 7 as calling for a legal conclusion.

8. The allegations in ¶ 8 are not directed at NCC. To the extent a response is required, denied.

9. The allegations in ¶ 9 are not directed at NCC. To the extent a response is required, denied.

FACTUAL ALLEGATIONS

10. NCC denies the allegations in ¶ 10 for lack of knowledge or information sufficient to form a belief therein.

11. NCC denies the allegations in ¶ 11 for lack of knowledge or information sufficient to form a belief therein.

12. NCC admits part of its business is the collection of debts and it uses the mail and interstate commerce to do so. Except as specifically admitted, NCC denies the allegations in ¶ 12.

13. The allegations in ¶ 13 are not directed at NCC. To the extent a response is required, denied.

14. NCC admits Pendrick placed an account in plaintiff's name with NCC for collection. Except as specifically admitted, NCC denies the allegations in ¶ 14.

15. NCC admits Pendrick placed an account in plaintiff's name with NCC for collection. Except as specifically admitted, NCC denies the allegations in ¶ 15.

16. NCC denies the allegations in ¶ 16.

17. NCC denies the allegations in ¶ 17.

18. NCC denies the allegations in ¶ 18.

19. NCC denies the allegations in ¶ 19.

20. NCC admits the allegations in ¶ 20.

21. NCC denies the allegations in ¶ 21 for lack of knowledge or information sufficient to form a belief therein.

22. NCC denies the allegations in ¶ 22.

23. NCC denies the allegations in ¶ 23.

24. NCC denies the allegations in ¶ 24.

25. NCC denies the allegations in ¶ 25.

26. NCC denies the allegations in ¶ 26.

27. NCC denies the allegations in ¶ 27.

28. NCC denies the allegations in ¶ 28.

29. NCC denies the allegations in ¶ 29.

30. NCC denies the allegations in ¶ 30.

31. NCC denies the allegations in ¶ 31.

32. NCC denies the allegations in ¶ 32.

33. NCC denies the allegations in ¶ 33.

34. NCC denies the allegations in ¶ 34.

35. NCC admits its records show it sent a letter to plaintiff. The letter speaks for itself and is the best evidence of its content. To the extent the allegations in ¶ 35 state otherwise, denied.

36. NCC denies the allegations in ¶ 36.

37. NCC denies the allegations in ¶ 37 as calling for a legal conclusion.

38. NCC denies the allegations in ¶ 38.

39. NCC admits it voluntarily attempted to contact plaintiff. Except as specifically admitted, NCC the allegations in ¶ 39.

40. NCC admits it voluntarily attempted to contact plaintiff. Except as specifically admitted, NCC the allegations in ¶ 40.

41. NCC denies the allegations in ¶ 41.

42. NCC denies the allegations in ¶ 42.

43. NCC admits it maintains records of its attempts to contact debtors. Except as specifically admitted, NCC denies the allegations in ¶ 43 for lack of knowledge or information sufficient to form a belief therein.

44. NCC denies the allegations in ¶ 44 for lack of knowledge or information sufficient to form a belief therein.

45. NCC denies the allegations in ¶ 45 for lack of knowledge or information sufficient to form a belief therein.

46. NCC denies the allegations in ¶ 46.

COUNT I
VIOLATION OF 15 § 1692d
NCC

47. NCC reasserts the foregoing as if fully set forth herein.

48. NCC denies the allegations in ¶ 48.

COUNT II
VIOLATION OF 15 U.S.C. § 1692d(6)
NCC

49. NCC reasserts the foregoing as if fully set forth herein.

50. NCC denies the allegations in ¶ 50.

COUNT III
VIOLATION OF 15 U.S.C. § 1692e(11)
NCC

51. NCC reasserts the foregoing as if fully set forth herein.

52. NCC denies the allegations in ¶ 52.

COUNT IV
VIOLATION OF 15 U.S.C. § 1692g(a)
NCC

53. NCC reasserts the foregoing as if fully set forth herein.

54. NCC denies the allegations in ¶ 54.

COUNT V
VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)
NCC

55. NCC reasserts the foregoing as if fully set forth herein.

56. NCC denies the allegations in ¶ 56.

COUNT VI
TEX. BUS. & COM. CODE § 305.053
NCC

57. NCC reasserts the foregoing as if fully set forth herein.

58. NCC denies the allegations in ¶ 58.

COUNT VII
VIOLATION OF 15 U.S.C. § 1692d
PENDRICK

59. NCC reasserts the foregoing as if fully set forth herein.

60. NCC denies the allegations in ¶ 60.

61. NCC denies the allegations in ¶ 61.

COUNT VIII
VIOLATION OF 15 U.S.C. § 1692d(6)
PENDRICK

62. NCC reasserts the foregoing as if fully set forth herein.

63. NCC denies the allegations in ¶ 63.

64. NCC denies the allegations in ¶ 64.

COUNT IX
VIOLATION OF 15 U.S.C. § 1692e(11)
PENDRICK

65. NCC reasserts the foregoing as if fully set forth herein.

66. NCC denies the allegations in ¶ 66.

67. NCC denies the allegations in ¶ 67.

COUNT X
VIOLATION OF 15 U.S.C. § 1692g(a)
PENDRICK

68. NCC reasserts the foregoing as if fully set forth herein.

69. NCC denies the allegations in ¶ 69.

70. NCC denies the allegations in ¶ 70.

COUNT XI
VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)
PENDRICK

71. NCC reasserts the foregoing as if fully set forth herein

72. NCC denies the allegations in ¶ 72.

73. NCC denies the allegations in ¶ 73.

COUNT XII
TEX. BUS. & COM. CODE § 305.053
PENDRICK

74. NCC reasserts the foregoing as if fully set forth herein.

75. NCC denies the allegations in ¶ 75.

76. NCC denies the allegations in ¶ 76.

TRIAL BY JURY

77. NCC admits plaintiff has requested a trial by jury. Except as specifically admitted, NCC denies the allegations in ¶ 77.

NCC'S AFFIRMATIVE DEFENSES

1. To the extent any violations are established, any such violations were not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

2. NCC denies any liability; however, regardless of liability, plaintiff has suffered no actual damages as a result of NCC's purported violations.

3. One or more claims asserted by plaintiff are barred by the statute of limitations, laches, estoppel, wavier and/or unclean hands.

4. Assuming plaintiff suffered any damages, he has failed to mitigate his damages or take other reasonable steps to avoid or reduce his damages.

5. Any harm suffered by plaintiff was legally and proximately caused by persons or entities other than NCC and were beyond the control or supervision of NCC or for whom NCC was and is not responsible or liable.

6. Plaintiff has failed to state a claim against NCC upon which relief may be granted.

7. One or more of the telephone calls made to plaintiff were not made to a wireless, *i.e.*, cellular, telephone.

8. Plaintiff consented and authorized calls to the phone number in question.

9. The phone calls made to plaintiff are exempt from TCPA liability under 47 U.S.C. § 227(b)(1)(B), 47 U.S.C. § 227(b)(2)(b) and 47 C.F.R. § 64.1200(a).

10. The equipment used to make the telephone calls at issue is not covered by or subject to the TCPA.

11. To the extent the calls at issue were to plaintiff's cellular telephone, as alleged, plaintiff provided consent to receive those calls.

12. To the extent plaintiff was not the intended recipient of the calls, plaintiff has no standing to assert the claim.

13. Plaintiff acquiesced in and/or consented to the acts and omissions alleged in the Complaint.

WHEREFORE, Defendant, Commonwealth Financial Systems, Inc. *d/b/a* NCC, requests the Court dismiss this action with prejudice and grant it any other relief that the Court deems appropriate.

Respectfully submitted,

/s/ Whitney L. White
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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2015, a copy of the foregoing **Defendant, Commonwealth Financial Systems, Inc. *d/b/a* NCC's, Answer and Affirmative Defenses** was electronically filed with the Clerk of the Court, United States District Court for the Eastern District of Texas and served via CM/ECF upon the following:

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